



Appellant submitted a statement outlining those incidents he believed contributed to his condition. He indicated that he was with the employing establishment for almost 30 years and that he had dealt with numerous officers in charge (O.I.C.). However, the postmaster, Gail E. Strauss-Zaborsky, created a tension between himself and her that placed mental and physical strain on him. Appellant noted that she asked him to come in an hour later during the summer season to avoid paying extra time as a result of mail carriers returning to the employing establishment late. He indicated that he had to seek assistance to discontinue her action. In particular, appellant noted that on November 8, 2003 he was brought into the office and while the door was open, the postmaster yelled at and ridiculed him. He alleged that she chided him for comparing her managing skills against Sotomayor, the former postmaster, and that she told him that it was daring of him to leave a crossword puzzle on her desk. Appellant denied that it was his puzzle and that he told Ms. Zaborsky to control herself as the coworkers and customers could hear. He stated that Ms. Zaborsky changed her tone to a one-way conversation and that he incurred a severe headache and chest pains thereafter. As he drove himself home, appellant stated that he experienced pain and numbness in his left arm and a tingling sensation in his fingertips. He indicated that he had to pull over and was subsequently taken to the hospital and held overnight for observation. As a result of this meeting, appellant stated that the postmaster contributed to his stress by placing additional responsibilities upon him that included changing his tour with Barbara Hill, a carrier supervisor, and helping her with additional duties.

The employing establishment challenged the claim by letter dated December 9, 2002 and indicated that appellant's claim was a reaction to administrative actions by the postmaster.

In a November 8, 2002 statement, Ms. Zaborsky, the postmaster, indicated that she had a brief discussion with appellant regarding the amount of delayed mail that was still "sitting" on the customer service side of the distribution of operations and he was more concerned with the faults of the delivery supervisor and did not appear concerned. She stated that she was concerned about his job performance and approached appellant to discuss the matter. Ms. Zaborsky noted that appellant became glassy eyed and when she pointed out weaknesses of certain employees, he accused her of being prejudiced, complained of a headache and left. She noted that appellant subsequently returned complaining of pain in his chest and insisted on driving himself to the hospital. Ms. Zaborsky indicated that appellant had a history of high-blood pressure and irrational behavior when confronted with negligence and previously had several encounters with conflict resolution due to confrontations with other employees. She denied belittling or degrading appellant by mentioning that the door was open.

The medical evidence in support of appellant's claim included a November 13, 2002 disability certificate, in which a physician whose signature is illegible, diagnosed chest pain and indicated that appellant would be out of work from November 13 to 20, 2002, a November 19, 2002 return to work certificate from Dr. Malvin Keller, Board-certified in internal medicine, and a November 25, 2002 medical assessment form in which the employing establishment's physician whose signature was illegible, indicated that appellant had no limitations or restrictions based on cardiac strength results.

By letter dated December 20, 2002, the Office requested additional factual and medical information from appellant.

In a January 9, 2003 response, appellant indicated that ever since Ms. Zaborsky came to the unit, she created a tension that caused him to sustain mental and physical strain. He cited examples such as her changing his report to work times in an effort to avoid paying overtime, yelling at him from her office to talk to her about training an individual and pressuring him to change his tour with another employee and adding additional job responsibilities when he resisted the change. Appellant listed a series of incidents dating from September 3 to November 12, 2002, in which he felt the actions of Ms. Zaborsky were inappropriate and caused him to experience stress or tension in the performance of his duties.

By decision dated July 24, 2003, the Office denied appellant's claim for compensation as the factual evidence was insufficient to establish that he sustained an injury as alleged.<sup>1</sup>

### **LEGAL PRECEDENT**

To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that he has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.<sup>2</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*<sup>3</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>4</sup> There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under the Act.<sup>5</sup> When an employee experiences emotional stress in carrying out his employment duties and the medical evidence establishes that the disability resulted from his emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of his work.<sup>6</sup>

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<sup>1</sup> The Office indicated that appellant's physician confirmed the existence of hypertension and chest pains, but never attributed these conditions to incidents or events at work. The Office further noted that the employing establishment denied appellant's allegations and he did not submit independent statements.

<sup>2</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>3</sup> 28 ECAB 125 (1976).

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> See *Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

<sup>6</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

## ANALYSIS

The Office issued a decision on July 24, 2003 which denied appellant's claim on the basis that the evidence was insufficient to establish that he sustained an injury as alleged.

In this case, appellant attributed his emotional condition to the actions of his supervisor, Ms. Zaborsky. He alleged that he developed an emotional condition due to being yelled at by her with the door open in front of other employees when they had a meeting. Appellant also claimed that Ms. Zaborsky added additional pressure and responsibilities on him by being pressured to change his tour of duty and reporting to work times.

Appellant alleged acute stress on November 8, 2002 when Ms. Zaborsky yelled at him with the door open in front of others. The supervisor acknowledged speaking with appellant and discussing matters with him concerning the performance of certain employees; however, she denied belittling or degrading him by mentioning that the door was open. While the meeting may have disturbed appellant and he may not have liked having the door open, not every ostensibly offensive statement uttered in the workplace gives rise to coverage. The Board finds that the supervisor's comments did not constitute verbal abuse.<sup>7</sup> A claimant's own feeling or perception that a form of criticism by or disagreement with a supervisor is unjustified, inconvenient or embarrassing is self-generated and does not give rise to coverage under the Act absent evidence that the interaction was, in fact, erroneous or abusive. This principle recognizes that a supervisor or manager must be allowed to perform his or her duties and that, in performing such duties, employees will at times dislike actions taken.<sup>8</sup>

Regarding appellant's allegations that the employing establishment improperly assigned work duties by asking him to perform additional tasks and changed his tour of duty, the Board finds that these allegations related to administrative or personnel matters, are unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>9</sup> As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> In this case, appellant has submitted no evidence substantiating his allegations that the employing establishment acted unreasonably.

Appellant has also alleged that his emotional condition arose from the overwork to which he was subjected. The Board has held that overwork maybe a compensable factor of

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<sup>7</sup> *Judy L. Kahn*, 53 ECAB \_\_\_\_ (Docket No. 00-457, issued February 1, 2002).

<sup>8</sup> *Michael A. Deas*, 53 ECAB \_\_\_\_ (Docket No. 00-1090, issued November 14, 2001).

<sup>9</sup> 5 U.S.C. §§ 8101-8193; *see Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gates*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>10</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

employment.<sup>11</sup> The evidence in this case however, is insufficient to establish that appellant was in fact overworked. Although he has alleged that he suffered from stress as a result of being overworked by Ms. Zaborsky, he has not submitted any evidence to corroborate his being overworked by Ms. Zaborsky, he has not submitted any evidence to corroborate his allegation and has, therefore, failed to substantiate this compensable factor of employment.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.

### **ORDER**

The July 24, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: January 14, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>11</sup> *Robert W. Wisenberger*, 47 ECAB 406, 408 (1996).